

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ONEWEST BANK N.A.,

Plaintiff,

-against-

GEORGE DIMITRATOS et al.,

Defendants.
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NICHOLAS G. GARAUFIS, United States District Judge.

ORDER

14-CV-05027 (NGG) (RML)

On August 25, 2014, Plaintiff OneWest Bank N.A. filed this mortgage foreclosure action against Defendants George and Zaharola Dimitratos (the “Dimitratos Defendants”), Citifinancial Company (DE), Slomins, Inc., and John Doe numbers one through ten (the “John Doe Defendants”). (Compl. (Dkt. 1).) The Dimitratos Defendants filed an answer on October 1, 2014. (Answer and Counterclaim (Dkt. 13).) On November 18, 2015, the Clerk of Court noted the defaults of Defendants Citifinancial Company (DE) (Entry of Default (Dkt. 31)) and Slomins, Inc. (Entry of Default (Dkt. 32)). On December 17, 2015, Plaintiff filed a motion seeking: (1) summary judgment, computation of damages, and judgment of foreclosure and sale against the Dimitratos Defendants, (2) default judgments against Citifinancial Company (DE) and Slomins, Inc., and (3) to amend the caption in this case to substitute CIT Bank, N.A. for OneWest Bank N.A., and to strike the John Doe Defendants. (Not. of Mot. for Summ. J. (Dkt. 33).) On December 18, 2015, the undersigned referred Plaintiff’s motion to Magistrate Judge Robert M. Levy for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Order Referring Mot. (Dkt. 40).)

On January 28, 2016, Judge Levy issued an R&R recommending that the court grant Plaintiff’s motion for summary judgment against the Dimitratos Defendants as unopposed, and

approve Plaintiff's proposed judgment of foreclosure and sale. (Jan. 28, 2016, R&R (Dkt. 42) at 3.) In addition, Judge Levy recommended that the Dimitratos Defendants be given 90 days from the date of that R&R to vacate the premises. (Id.) Finally, Judge Levy recommended granting Plaintiff's request to amend the caption in the case. (Id. at 3 n.1.) On February 9, 2016, Judge Levy issued a separate R&R recommending that the court grant Plaintiff's motion for default judgments against Defendants Citifinancial Company (DE) and Slomins, Inc. (Feb. 9, 2016, R&R (Dkt. 43).)

No party has objected to Judge Levy's R&Rs, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also Jan. 28, 2016, R&R at 4 ("Any objections to this [R&R] must be filed within fourteen (14) days . . . in order to preserve appellate review."); Feb. 9, 2016, R&R at 2.) Therefore, the court reviews the R&Rs for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). The court finds no clear error; however, it is the court's belief that the Dimitratos Defendants should be given 90 days from the date of entry of this Order, rather than from the date of the January 28, 2016, R&R, to vacate their premises.

Therefore, the court ADOPTS IN PART the January 28, 2016, R&R and, accordingly, GRANTS Plaintiff's motion for summary judgment, GRANTS Plaintiff's motion for judgment of foreclosure and sale, and GRANTS WITHOUT PREJUDICE Plaintiff's request to discontinue the action against the John Doe Defendants. The court departs from the January 28, 2016, R&R only in that the Dimitratos Defendants shall be given 90 days from the date of entry of this Order to vacate the premises. The court ADOPTS IN FULL the February 9, 2016, R&R and,

accordingly, GRANTS Plaintiff's motion for default judgments against Citifinancial Company (DE) and Slomins, Inc.

The Clerk of Court is respectfully DIRECTED to amend the caption to substitute CIT Bank, N.A. for OneWest Bank N.A., and enter judgment against all Defendants consistent with this Order.

SO ORDERED.

Dated: Brooklyn, New York
February 24, 2016

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge